IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 35931 of 2004(C)

OS.303/2002 of MUNSIFF COURT, TIRUR
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PETITIONER:

CHAPPAYIL KARAPPAN, AGED 75,
S/O.THEYYAN, PILATHARA, P.O.KADAMPUZHA,
MALAPPURAM DISTRICT.

ADDL. P2 TO P4 ARE IMPLEADED

2. ACHUTHAN S/O. KARAPPAN, AGED 48,
PILATHARA, POST KADAMPUZHA,
MALAPPURAM DISTRICT.

3. KARTHIYAYANI, D/O. DO. AGED 44, DO. DO.

4. BHASKARAN, S/O. DO. DO.

ADDL. P2 TO P4 ARE IMPLEADED AS PER ORDER DT. 25.07.2007 IN IA. 5056/2007.

BY ADV. SRI.K.RAMACHANDRAN
SRI.P.RAMACHANDRAN
SMT.R.MEERA

RESPONDENTS:
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1. SASEEDHARAN UNNI, S/O.KAMALAKSHIKUTTY NE THAYARAMMA, THEKKANCHERY HOUSE, P.O., KANIYAMPRAM(OTAPPALAM), PALAKKAD DISTRICT.

2. STATE OF KERAL, REP. BY THE CHIEF SECRETARY TO GOVERNMENT, SECRETRIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.T.KRISHNAN UNNI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/07/2007, ALONG WITH WPC NO. 2441 OF 2005 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.35931/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE MUNSIFF'S COURT, TIRUR IN IA. 1935/04 IN OS. 303/02 DT. 26.11.04.

EXT.P2:- COPY OF THE MUNSIFF'S COURT, TIRUR IN IA. NO.1828/04 IN OS. NO.303/02 DT. 16.10.04.

EXT.P3:- COPY OF THE LETTER DT. 8.12.99 FROM THE SECRETARY, LAND BOARD THIRUVANANTHAPURAM , TO THE PETITIONER.

EXT.P4:- COPY OF THE AFFIDAVIT IN SUPPORT OF IA 1934/04 IN OS. 303/02 FILED BY THE PETITIONER BEFORE THE MUNSIFF'S COURT, TIRUR DT. 19.8.04.

/TRUE COPY/

P.A. TO JUDGE

tss

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 35931/2004 & 2441/2005

Dated this the 25th day of July , 2007

JUDGMENT

The defendant in a suit filed by the first respondent for a declaration of his title and recovery of possession in respect of the suit schedule property having an extent of 40 cents in R.S. No.176/2 of Melmuri Amsom Desom, in Malappuram District challenges Ext.P2 order passed by the learned Munsiff on an application for stay filed under Section 10 of the CPC. The petitioner is a lessee of one acre of property from the Tharavadu of the 1st respondent long ago. Several years after that the first respondent or his branch gets jenm right to the suit property which is only a portion of the property already leased out to the petitioner. The petitioner had been granted certificate of purchase twice by the competent Land Tribunal as per suo moto proceedings. But later on the third occasion, the very same Land Tribunal set aside that certificate of purchase, due to a remand order by the Appellate Authority mainly on the reason that the relevant documents produced by the petitioner and marked in the Land Tribunal were missing at that subsequent stage. Now those records have been traced out and forwarded to the appellate authority before

whom the petitioner has filed an appeal from the last order of the land Tribunal and the same is pending before that authority. In the meanwhile, since the learned Munsiff was going ahead with the trial of the suit, two applications were filed by the petitioner. One was for referring the plea of tenancy raised by him to the competent Tribunal, the other one was for stay of the suit till the appellate authority disposed of the appeal. Under the order impugned in WP.(C) No.35931/2004, the application for stay filed under Section 10 was dismissed by the learned Munsiff.

2. The petitioner's case in WPC No.2441/2005 is that the documents Exts.A1 to A14 produced by him before the Land Tribunal in the O.A which is subject matter of A.A. No. 205/2000 now pending before the appellate Authority are not available in the case bundle. These documents are vital and necessary for the petitioner to prosecute his case before the Appellate Authority. He, therefore, submitted a representation to the Hon'ble Minister for Revenue. He has been informed by Ext.P1 communication that the documents have been traced out and that the same have been forwarded to the Appellate Authority. But it is understood that the documents are not available in the Appellate Authority,Thrissur. The petitioner, therefore submitted Ext.P2 representation before the 4th respondent District

Colletor, Malappuram. There is no response. Therefore, the petitioner filed an application before the 3rd respondent for getting certified copies of Exts.A1 to A14. By Ext.P3 communication, the 3rd respondent informed the petitioner that Exts.A1 to A14 are not seen in the case record and therefore, the request may not granted. The petitioner suspect that the present state of affairs should be due to the tactics of the landlord/6th respondent. The prayers in the writ petition is for issue a writ of mandamus commanding the respondents 2 to 5 to trace out the documents or to direct the 3rd respondent to issue certified copies of the documents.

3. I have heard the submissions of Sri. K.Ramachandran, the learned counsel for the petitioner, Sri.T.Krishnanunni, the learned counsel for the party respondent and those of the learned Government Pleader.

4. As for W.P.(C) No.2441/2005, the Government Pleader submitted on the basis of a letter dated 1.7.2005 received from the Land Tribunal to the Advocate General that the documents Exts.A1 to A14 in S.M.No.186/87 are safely kept in file No. SM 602/79 of the Defunct Land Tribunal, Kuttippuram. It is also stated in the letter that the details of these exhibits have been stated in the order of the Land Tribunal, Tirur in S.M. No.186/87 dated 13.4.1993 which is the order

impugned in A.A.No.205/2000 on the files of the Land Reforms Appellate Authority. In view of the facts disclosed by the letter of the Land Tribunal, there will be a direction to the Land Reforms Appellate Authority to incorporate the documents Exts.A1 to A14 presently available in SM.No.602/79 of the defunct Land Tribunal, Kuttippuram as part of the records in SM No.186/87 and to take a decision in the A.A. at the earliest and at any rate within tow months of receiving a copy of this judgment.

6. As for the orders which are impugned in W.P.(C) No. 35931/2004, Mr.T.Krishnanunni's argument is that the pendency of a parallel proceeding before the Land Tribunal will not be justification for making a reference under Section 125(3) of the KLR Act. The above argument which has the support of the judgment of this court in **Krishnamma v. Nageswari Amma (1984 KLT 810)** is acceptable. The counsel further argued against Ext.P2 that Section 10 of the Code of Civil Procedure will not apply when stay is sought for on the basis of pendency of the previous proceedings before the Land Tribunal and it should be noticed that this arguments also has the support of the judgment of this court in **Govindankutty Mannadiar v. Lakshmikutty Amma (1983 KLT 557)** At the same time, it is to be noticed that the petitioner invoked inherent powers of the court

saved under Section 151 of the CPC. A.A. No.205/2000 is pending now before the Land Reforms Appellate Authority. I have already directed the Land Reforms Appellate Authority to take a decision in the I.A within a short time frame. The petitioner is likely to have pragmatic difficulties in pursuing the trial unless he is able to produce atleast certified copies of the documents Exts.P1 to A14, which according to me, are crucial for correctly resolving the issues in the suit. Therefore, I direct the learned Munsiff to specialist the suit for trial only during or after December 2007. In the meanwhile, if the appellate authority decides the appeal in favour of the petitioner, it is open to the petitioner to produce a copy of the judgment of the appellate authority. If for some reason the appeal is not disposed of by the appellate authority, till then, it is for the petitioner to obtain certified copies of Exts.A1 to A14 from the Appellate Authority and produce them before the Learned Munsiff and get ready for trial, which will be commenced by the learned Munsiff at any rate during the 2nd week of January 2008.

Both the writ petitions are disposed of as above. No cost.

PIUS C. KURIAKOSE,
JUDGE.

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